APPENDIX A

Statutes Involved

Railway Labor Act:

Section 3, First (p) and (q) and Section 3, Second of the Railway Labor Act, 45 U.S.C.A. 153, First (p), (q) and 153, Second:

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board: *Provided, however,* That such order may not be set aside except for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within

the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28, United States Code.

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of

adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or such representative fails to agree upon the establishment of such a board as provided herein, or to exercise its rights to designate a member of the board, the carrier or representative making the request for the establishment of the special board may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such request was made. Upon receipt of a request for such designation the Mediation Board shall promptly make such designation and shall select an individual associated in interest with the carrier or representative he is to represent, who, with the member appointed by the carrier or representative requesting the establishment of the special board, shall constitute the board. Each member of the board shall be compensated by the party he is to represent. The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisdiction of the board. If they are unable

to agree such matters shall be determined by a neutral member of the board selected or appointed and compensated in the same manner as is hereinafter provided with respect to situations where the members of the board are unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters. If with respect to any dispute or group of disputes the members of the board designated by the carrier and the representative are unable to agree upon an award disposing of the dispute or group of disputes they shall by mutual agreement select a neutral person to be a member of the board for the consideration and disposition of such dispute or group of disputes. In the event the member of the board designated by the parties are unable, within ten days after their failure to agree upon the award, to agree upon the selection of such neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request the Mediation Board shall promptly make such appointment. The neutral person so selected or appointed shall be compensated and reimbursed for expenses by the Mediation Board. Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both parties to the dispute and if in favor of the petitioner, shall direct the other party to comply therewith on or before the day named. Compliance with such awards shall be enforceable by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.[4]

Judicial Code:

Sections 1331 and 1337, 28 U.S.C.A. 1331, 1337

§ 1331

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy ex-

ceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

(b) Except when express provisions therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff. As amended July 25, 1958, Pub. L. 85-554, § 1, 72 Stat. 415.

§ 1337—

The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

APPENDIX B

Judgment

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

Thursday, May 8, 1969

Before

HON. F. RYAN DUFFY, Senior Circuit Judge

HON. ROGER J. KILEY, Circuit Judge

HON. LUTHER M. SWYGERT, Circuit Judge

No. 17184

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, *Appellant*,

v.

SPECIAL BOARD OF ADJUSTMENT NO. 605, and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *Appellees*.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the decision of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this day.

APPENDIX C

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

v.

SPECIAL BOARD OF ADJUSTMENT No. 605, and ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, No. 17184, May 8, 1969

Appeal from the U. S. District Court for the Northern District of Illinois. Judgment affirmed.

Before DUFFY, Senior Circuit Judge, and KILEY and SWYGERT, Circuit Judges.

Full Text of Opinion

SWYGERT, Circuit Judge:—This appeal presents the issue whether an award of a board of arbitration created by private agreement between parties subject to the Railway Labor Act is to be accorded judicial review in a federal court on the same basis as provided in the Act for the awards of statutory arbitration boards. In light of our holding with respect to this jurisdictional question, we need not reach the subsidiary issue whether the arbitration award in this case should be set aside.

Petitioner, the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, filed a petition in the district court seeking review of an award of a board of arbitration created by contract and designated Special Board of Adjustment No. 605. The petition alleged that the award had been entered pursuant to the provisions of the Railway Labor Act, 45 U.S.C. §§ 151-188 and that jurisdiction to review was conferred upon the court by Section 3, First (q) of the Act, 45 U.S.C. § 153, First (q).

[LOWER COURT'S RULING]

The district court entered summary judgment in favor of the defendant, The Atchison, Topeka and Santa Fe Railway Company. Brotherhood of Railway Clerks v. Special

Bd. of Adj. No. 605, 286 F. Supp. 397, (N.D. Ill. 1968). The court held that it was without jurisdiction to review the award in question and that even if it had jurisdiction, the pleadings failed to establish any sufficient ground for review.

The controversy which gave rise to the disputed arbitration proceeding grew out of a complicated bargaining history. In July 1944, National Carloading Corporation, a freight forwarder, located its loading operations on a site served by the Chicago and North Western Railway Company. National's employees doing freight handling work were transferred at that time to C&NW's payroll and a C&NW-National joint seniority roster was established which maintained employees' seniority rights with both companies.

Although this arrangement prevailed during the ensuing years, in 1956, after it became known that National contemplated another transfer from the C&NW facility to a warehouse owned by Santa Fe, the Brotherhood demanded that Santa Fe enter into a joint seniority roster agreement similar to that which had been in effect with C&NW. Consequently, Santa Fe, National, and the Brotherhood entered into a tripartite agreement on February 5, 1957 whereby the parties stipulated that the freight handlers then on the C&NW payroll would be transferred to Santa Fe without loss of seniority. The February 5 agreement further provided:

6. The National Carloading Corporation agrees that in the event the work transferred from the C&NW to the Santa Fe is returned to National, the latter will take over the employees then employed by Santa Fe in the combined National-Santa Fe seniority district without loss of their seniority.

Subsequently, the freight handlers on the C&NW payroll were transferred to Santa Fe and performed National's dock work without incident until mid-1965, when National announced that it intended to exercise its right to resume supervision of this work itself on August 1, 1965. Em-

ployees who had been performing National's freight handling were informed that they could submit new employment applications and be considered for employment. When National did not find it necessary to employ all the freight handlers previously carried on the joint Santa Fe-National seniority roster, the Brotherhood claimed that those not employed by Santa Fe and thus entitled to the benefits of an industry-wide job protection agreement which had been executed on February 7, 1965 by the National Railway Labor Conference, Santa Fe's bargaining agent, and the Employees' National Conference Committee, which represented the Brotherhood. On the basis of a provision in the February 7 agreement relating to job stabilization benefits for "protected employees," the Brotherhood asserted that the employees who had not found employment with National were to be retained by Santa Fe in their jobs and protected from loss of earnings "until retired, discharged for cause, or otherwise removed by natural attrition."

Santa Fe contended that its employment relationship with the freight handlers in question had been severed by operation of paragraph 6 of the February 5, 1957 tripartite agreement by virtue of the fact that the dock work involved had been taken back by National and hence the freight handlers were not "protected employees" within the definition of the February 7 agreement.

Because the parties were unable to resolve their dispute, the Brotherhood submitted it to the "Disputes Committee" as provided in the February 7, 1965 Agreement.[1] In its

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[1] Article VII, Section 1 of the February 7 Agreement provides:

Any dispute involving the interpretation or application of any of the terms of this agreement and not settled on the carrier may be referred by either party to the dispute for decision to a committee consisting of two members of the Carriers' Conference Committees signatory to this agreement, two members of the Employees' National Conference Committee signatory to this agreement, and a referee to be selected as hereinafter provided. The referee selected shall preside at the meetings of the committee and act as chairman of the committee. A majority vote of the partisan members of the committee shall be necessary to decide a dispute, pro vided that if such partisan members are unable to reach a decision, the dispute shall be decided by the referee. Decisions so arrived at shall be final and binding upon the parties to the dispute.

submission to the committee created in response to the request, designated "Special Board of Adjustment No. 605," the Brotherhood advanced two specific questions:

(1) Are Santa Fe employees with a seniority date of October 1, 1962 and earlier, who prior to August 1, 1965, were engaged in the handling of National Carloading Corporation freight at the Corwith House # 1, Chicago, Illinois, entitled to protection under the February 7, 1965 Stabilization Agreement?

(2) If so, shall employees qualifying for protection thereunder be returned to the payroll of the Santa Fe and compensated according to the provisions of Article IV of the February 7, 1965 Stabilization Agreement?

Board No. 605 considered the questions and concluded from the two collective bargaining agreements presented, the tripartite agreement and the February 7 Agreement, that employment of the bargaining unit had shifted from Santa Fe to National when National took back its freight handling work. Thus it found that the employees were not "protected employees" within the meaning of the February 7 Agreement and were not entitled to benefits.

[Petition for Review]

Thereafter, the Brotherhood filed a petition for review in the district court which is the subject of this appeal. The district court entered summary judgment for the defendant Santa Fe. We affirm the judgment.

It is our opinion that the district court correctly determined that it did not have jurisdiction to review the claims presented. The first provision of the Railway Labor Act relied upon by the Brotherhood to press its claim of jurisdiction is Section 3, First (q), 45 U.S.C. § 153, First (q). That provision was part of a package of amendments to Section 3 enacted by Congress in 1966. The two basic objectives behind adoption of these amendments were (1) to eliminate the backlog of claims pending before the National

Railroad Adjustment Board, and (2) to provide equal opportunity for limited judicial review of NRAB awards. 1966 U.S. Code Cong. & Admin. News, 2285-86. The part of Section 3, First (q), upon which the Brotherhood relies reads:

> If any employee or group of employees . . . is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award . . . then such employee or group of employees . . . may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. . . . The Court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

The district court properly concluded that only awards of regular divisions of the NRAB are within the purview of the section and that consequently its jurisdiction to review an award of the "Disputes Committee" created under the Februry 7 Agreement is precluded.

Section 3, Second of the Act, which, in pertinent part, provides for the creation of 'special boards of adjustment" to consider and decide grievance-type disputes which otherwise could be submitted to the NRAB is inapplicable to the instant case. That section, even if otherwise applicable, cannot be the basis of jurisdiction here since it vests au-

thority in the district courts only to enforce but not to review awards of special boards.

The plain wording of Section 3, First (q) relates only to statutory Boards. The Special Adjustment Board No. 605 is not a statutory board at all but solely the product of a contract between private parties. Board No. 605 is a common law board of arbitration established by parties who happened otherwise to be subject to the Act. Not every form of arbitration in the railroad industry is subject to the review provisions of Section 3 of the Railway Labor Act. Even though the creation of Board No. 605 was sanctioned by the Act, it was not a statutory board and therefore not subject to the review of Section 3, First (q).

The second jurisdictional basis proposed is that this cause arises under 28 U.S.C. §§ 1331 and 1337. As authority, petitioner calls our attention to the Supreme Court's decision in International Association of Machinists v. Central Airlines, Inc., 372 U.S. 682 (1963). That this case is inapplicable to the dispute before us is apparent if we keep in mind the fact that Board No. 605 is a contractual and not a statutory board. In Central Airlines, the parties agreed to establish a system board of adjustment to resolve grievance disputes. The Supreme Court, in ruling that awards of an airline system board of adjustment can be enforced in a federal court, made it clear that agreements to submit matters to these boards were not permissible but mandatory. The court observed:

> The parties were placed under the statutory duty of establishing and utilizing system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes arising under existing contracts. Id. at 686.

In the case at bar, neither party was directed by the Act to establish the "Disputes Committee." This committee was created by contract and was not a statutory board like that involved in Central Airlines. For the same reason, the two other cases cited by the Brotherhood involving

statutory boards are inapposite. Northwest Airlines, Inc. v. Air Line Pilots Association, 373 F.2d 136 (8th Cir. 1967), and Dominguez v. National Airlines, Inc., 279 F. Supp. 392 (S.D.N.Y. 1968).

There is no overriding equitable ground for finding a source of jurisdiction here. The result of this case cuts both ways, neither labor organizations nor railroads can petition a federal court to review a private arbitration board's award.

Likewise the decision here is consistent with national labor policy of avoiding court review of the merits of arbitration awards rendered under collective bargaining agreements. United Steelworkers of America v. American Mfg. Co., 363 U.S. 564, 46 LRRM 2414 (1960).

The decision of the district court is affirmed.

APPENDIX D

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES,
Petitioner,

v.

SPECIAL BOARD OF ADJUSTMENT,
No. 605
and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
Respondents.

No. 67 C 1823.

United States District Court
N. D. Illinois, E. D.

June 28, 1968.

Albert Gore, of Jacobs & Gore, Chicago, Ill., Edward J. Hickey, Jr. and Wm. J. Hickey, of Mulholland, Hickey & Lyman, Washington, D. C., William J. Donlon, Gen.

Counsel, Brotherhood of Railway, Airline and Steamship Clerks, Cincinnati, Ohio, for petitioner.

C. George Niebank, Jr., Floyd Stuppi & Robert R. Bateson, Chicago Ill., for respondent Atchison, Topeka and Santa Fe.

MEMORANDUM AND ORDER ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

ROBSON, *District Judge.*

Respondent Santa Fe has moved for summary judgment. This court is of the opinion that the motion should be granted.

The petitioner Union and the respondent Santa Fe were parties to a multilateral mediation agreement entered into on February 7, 1965. This agreement provided that all controversies as to its interpretation and application were to be submitted by either party to a "disputes committee." Under the terms of the agreement, awards made by a "disputes committee" are final and binding.

A dispute arose as to the application of the mediation agreement to a particular group of employees represented by petitioner. Upon petitioner's election to submit the controversy to a "disputes committee," Special Board of Adjustment No. 605 was formed. Petitioner submitted two questions to the Special Board regarding the applicability of the agreement to the particular group of employees at issue. The Special Board answered both questions in the negative, thereby ruling against the petitioner.

Petitioner is now before this court seeking to set aside the award of the Special Board on the grounds that (1) the Special Board did not resolve the questions before it; (2) the Special Board resolved a question not before it, and therefore exceeded its jurisdiction, and (3) the Special Board undertook to interpret a court order which was not properly before it. Respondent Santa Fe contends that this court does not have jurisdiction over this matter, and

that even if jurisdiction were present, this award is not the proper subject of judicial review.

[1] The court agrees with the respondent that it does not have jurisdiction to review an award made by a special board of adjustment. Petitioner claims jurisdiction under 45 U.S.C.A. § 153, First (q). However, this provision delegates limited judicial review to the United States district courts only with respect to the National Railroad Adjustment Board and its enumerated divisions. There is no authorization here to review awards made by special boards.

A subsequent section of the Railway Labor Act authorizes the establishment of special boards by voluntary agreement. 45 U.S.C.A. § 153, Second. This provision sets out the administrative and procedural guidelines to be observed by a special board and specifies that its awards shall be final and binding on the parties. Judicial review is not authorized. The legislative history of this section indicates that Congress authorized special boards as a voluntary procedure to expedite the settlement of minor disputes, thereby alleviating the tremendous backlog of matters pending before the National Railroad Adjustment Board. 1966 U.S. Code Cong. and Adm. News, p. 2285.

Neither case law nor the legislative history of the pertinent provisions of the Railway Labor Act provide a basis for the jurisdiction of this court to review the award made by Special Board of Adjustment No. 605.

[2] Furthermore, even if this court were to find jurisdiction, the limited scope of review over awards made by the National Railroad Adjustment Board would preclude review of this case. Review is authorized only where the Board fails to comply with the requirements of the Railway Labor Act; or where the Board fails to confine itself to matters within the scope of its jurisdiction; or for fraud or corruption by a Board member. 45 U.S.C.A. § 153, First (q). Nothing in the pleadings indicates that Special

Board of Adjustment No. 605 has committed any of these transgressions. Petitioner submitted two specific questions to the Special Board for resolution and, in due course, received two specific answers. It appears that petitioner disapproves of the Board's rationale, contending that the Board reached its result by consideration of a matter not properly before it.

[3] The conclusions reached by the Special Board are clearly within its competency, as they directly and unequivocally answer the questions submitted by petitioner. It would be improper for this court to inquire into the reasons upon which the Board based its conclusions. Neither arbitrary nor capricious conduct by the National Railroad Adjustment Board are grounds for judicial review under the statute cited by petitioner; these grounds were in fact proposed, considered and rejected by the draftsmen of the statute. 1966 U.S. Code Cong. & Adm. News, p. 2287. This court must further observe that the United States Supreme Court has established as a principle of national labor policy that the federal courts should decline to review the merits of arbitration awards rendered under collective bargaining agreements. United Steelworkers of America v. American Mfg. Co., 363 U.S. 564, 80 S. Ct. 1343, 4 L. Ed. 2d 1403 (1960); United Steelworkers of America, AFL-CIO v. Warrior & Gulf Navigation Co., 363 U.S. 574, 80 S. Ct. 1347, 4 L. Ed. 2d 1409 (1960); United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960).

It is therefore ordered that the motion for summary judgment is hereby granted, and the cause is hereby dismissed with prejudice.